

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

DOCKETED
USNRC

In the Matter of)
)
CAROLINA POWER & LIGHT)
(Shearon Harris Nuclear)
Power Plant))

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Docket No. 50-400 - LA
ASLBP No. 99-702-LA
OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

**ORANGE COUNTY'S MOTION FOR LEAVE TO REPLY TO NRC STAFF'S
AND CP&L'S OPPOSITIONS TO PETITION FOR REVIEW
AND REQUEST FOR IMMEDIATE SUSPENSION AND STAY OF
THE NRC STAFF'S NO SIGNIFICANT HAZARDS DETERMINATION
AND ISSUANCE OF LICENSE AMENDMENT FOR
HARRIS SPENT FUEL POOL EXPANSION
AND REQUEST FOR EXPEDITED CONSIDERATION**

On December 22, 2000, the Board of Commissioners of Orange County, North Carolina ("BCOC" or "Orange County") petitioned the Nuclear Regulatory Commission ("NRC" or "Commission") for review and immediate stay or suspension of the NRC Staff's No Significant Hazards Determination ("NSH Determination") and issuance of a license amendment for the expansion of spent fuel pool storage capacity at the Shearon Harris nuclear power plant.¹ Both the NRC Staff and the Applicant, Carolina Power & Light Company ("CP&L"), have opposed the petition.²

While the Commission is authorized to take review of NSH determinations on its own motion, the regulations do not provide for petitions for review of those decisions.

1 Orange County's Petition for Review and Request for Immediate Suspension and Stay of the NRC Staff's No Significant Hazards Determination and Issuance of License Amendment for Harris Spent Fuel Pool Expansion ("BCOC Petition").
2 NRC Staff Opposition to Orange County's Petition for Review and Request for Immediate Suspension and Stay of the NRC Staff's No Significant Hazards Determination and Issuance of License Amendment for Harris Spent Fuel Pool Expansion (January 8, 2001) ("Staff Response"); Carolina Power & Light's Response to Orange County's December 22, 2000, Filing (January 8, 2001) ("CP&L Response").

Thus, there is no Commission guidance as to whether a reply pleading is permissible.

Ordinarily, with respect to petitions for review of Licensing Board decisions, reply pleadings are not entertained without express permission of the Commissioners.

Accordingly, relying on this regulation as guidance, Orange County hereby seeks leave to reply to the Staff and CP&L.³

Orange County submits that it is appropriate to grant this request for a number of reasons. First, the petition raises important legal issues regarding the Commission's review process for No Significant Hazards ("NSH") determinations, the relationship between NSH reviews and the application of the National Environmental Policy Act, and the bearing on NSH determinations of Licensing Board rulings that implicitly recognize the existence of NSH considerations. To Orange County's knowledge, these issues have not been briefed extensively before the Commission on previous occasions, if at all. In fact, it appears that there has only been one previous case in which the Commission has taken review of a NSH determination, *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-6-12, 24 NRC 1 (1986).

Second, the parties differ greatly in their view as to the finality of the decision under review, the standard for discretionary review, the aspect of the licensing proceeding that is under review, or whether Orange County may seek review at all. They also disagree about the nature and content of the No Significant Hazards standard, and whether it includes consideration of environmental issues. Orange County requests the

³ Orange County wishes to clarify that it has not filed its petition as a matter of "right," but as an attempt to exhaust its administrative remedies and provide the Commission with an opportunity to review the Staff's NSH Determination, before seeking relief in the U.S. Court of Appeals. The County believes that the egregious legal and factual errors committed by the Staff in this NSH proceeding give the Commission significant reason to

opportunity to correct misstatements of law that are made by the NRC Staff and CP&L, which should not be relied upon by the Commission to deny the relief that Orange County requests.

The parties disagree vehemently on factual issues relating to the NSH Determination and the issues in contention before the Licensing Board. This disagreement goes not just to the merits of Orange County's petition for review and stay motion, but to the qualifications of Orange County's expert witness, Dr. Gordon Thompson. Both the Staff's and CP&L's briefs are replete with mischaracterizations of Dr. Thompson's position in this proceeding, and appear designed to falsely undercut his credibility before the Commission. In response to these egregious misstatements, Orange County requests the opportunity to correct the record.

Finally, Orange County seeks the opportunity to discuss the significance of the failure of the NRC Staff, the party responsible for the NSH Determination, to grapple with -- or even address -- the serious allegations of legal and factual error made by Orange County in its Petition.

Accordingly, Orange County requests the opportunity to submit the attached Reply, as well as the attached Declaration of 16 January 2001 by Dr. Gordon Thompson in Response to Submissions Dated 8 January 2001 by Carolina Power & Light and the NRC Staff.

Because CP&L is in the process of implementing the license amendment which Orange County seeks to stay, and in order to protect Orange County's interest in obtaining timely relief, the County requests expedited consideration of this motion.

take review of the Staff's decision and issue a stay.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Diane Curran". The signature is fluid and cursive, with a large initial "D" and "C".

Diane Curran

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January 16, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)) CAROLINA POWER & LIGHT) (Shearon Harris Nuclear) Power Plant))	Docket No. 50-400 -OLA ASLBP No. 99-762-02-LA
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CERTIFICATE OF SERVICE

I certify that on January 16, 2001, copies of the foregoing ORANGE COUNTY'S REPLY TO NRC STAFF'S AND CP&L'S RESPONSES TO PETITION FOR REVIEW AND REQUEST FOR IMMEDIATE SUSPENSION, ETC. motion for leave to file same, and supporting Declaration of Dr. Gordon Thompson, were served on the following by e-mail and first class mail:

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